

B & M SERVICE, INC.

IBLA 79-589

Decided June 17, 1980

Appeal from a decision of the Colorado State Office, Bureau of Land Management, setting the rental charges for use and occupancy of communication site right-of-way C-17121.

Affirmed.

1. Communication Sites -- Federal Land Policy Management Act of 1976: Rights-of-Way -- Federal Land Policy and Management Act of 1976 -- Words and Phrases

"Fair Market Value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

2. Appraisals -- Communication Sites -- Rights-of-Way: Generally

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

3. Appraisals -- Communication Sites -- Rights-of-Way:
Generally

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

APPEARANCES: Amanda D. Bailey, Esq., Dufford, Waldeck & Williams, Grand Junction, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

B & M Service, Inc., has appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 13, 1979, setting a fair market rental value for communication site right-of-way C-17121 at \$500 per year. The decision stated that the amount of \$2,500 less a \$240 deposit for the period June 30, 1975, through June 29, 1980, was past due and payable within 30 days.

BLM granted right-of-way C-17121 to appellant on June 30, 1975, pursuant to the Act of March 4, 1911, as amended, 43 U.S.C. § 961 (1970) (repealed by Federal Land Policy and Management Act of 1976 (FLPMA), section 706, 90 Stat. 2743, 2793). The 50 year grant authorized a right-of-way for a 10-foot by 15-foot radio base station in the NW 1/4 SW 1/4 of sec. 22, T. 2 N., R. 103 W., sixth principal meridian, Rio Blanco County, Colorado.

On December 30, 1975, BLM issued an initial rental determination for appellant's site specifying a lump sum payment of \$3,450 for the first 7.5068-year period of the grant. Appellant appealed the assessment to the Board. Before a decision was reached, BLM requested that the case be remanded for reassessment of the rental based on additional data then available. We remanded the case by order of July 27, 1976.

BLM then reassessed the value of the right-of-way using the comparable lease method of appraisal. The resulting determination is the subject of this appeal.

[1] Appellant's right-of-way is now subject to the provisions of FLPMA. FLPMA, section 510(a), 43 U.S.C. § 1770(a) (1976); Full Circle, Inc., 35 IBLA 325 (1978). Under FLPMA and Departmental regulations, rights-of-way grantees must pay fair market value for rights-of-way on public lands. Section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1976), states

(g) The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: Provided, That when the annual rental is less than \$100, the Secretary concerned may require advance payment for more than one year at a time: * * *.

The appropriate regulation, 43 CFR 2802.1-7(a) reads in part:

[T]he charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: * * *. [1/]

In Full Circle, Inc., supra at 332, we noted that the Department had adopted the Uniform Appraisal Standards for Federal Land Acquisition (1976) developed by the Interagency Land Acquisition Conference as guidelines for Departmental appraisers determining charges for use of public lands. See 602 Departmental Manual 1.3; Paul Kellerblock, 38 IBLA 160 (1978); American Telephone and Telegraph Co., 25 IBLA 311, 348-49 (1976). Under those guidelines, fair market value in the case of right-of-way sites is "the amount in cash, or on terms reasonably equivalent to cash, for which in a probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desires but is not obligated to so use." American Telephone and Telegraph Co., supra at 349-50; see Uniform Appraisal Standards, supra at 3.

[2] BLM determined the fair market value of appellant's right-of-way site by comparing it with similar sites in the same region under private lease. This is a proper appraisal method for determining fair market value when current, well-established rental data for comparable sites is available. Full Circle, Inc., supra. BLM's appraisal report compared the following characteristics of three other sites with appellant's site:

SIZE: The relative sizes of the sites.

TENURE: The length of the leases and the effect of the length of leases on rental prices.

1/ Section 310 of FLPMA, 43 U.S.C. § 1740 (1976), provides that existing regulations will govern the administration of public lands to the extent practical prior to promulgation of new regulations. The cited regulation is that which was in effect upon enactment of FLPMA. Proposed regulations governing management of rights-of-way on public land pursuant to FLPMA were published for comment on October 9, 1979 (43 FR 58106). Final regulations have not yet been issued.

LOCATION: The relative distances from major population centers.

ACCESS: The type and quality of access available to the sites.

PHYSICAL CHARACTERISTICS: The actual character of the sites and view from them.

POWER: The availability of power at or near the sites.

TIME: The age of the leases and the effect of passing time on rental prices.

See Appraisal Report, pp. 3-4. Location and access are considered the dominant factors of the comparison. 2/

The BLM appraisal report summarized the data accumulated about the comparison leases in relation to appellant's site as follows:

COMPARISON TABLE

<u>Lease</u>	<u>Date</u>	<u>Annual</u> <u>Rent</u>	<u>Size</u>	<u>Tenure</u>	<u>Loc.</u>	<u>Acc.</u>	<u>Physical</u> <u>Charac.</u>	<u>Power</u>	<u>Time</u>	<u>Overall</u>
1-C	4/74	\$620	-	+	-	-	0	0	+	-
7-W	5/79	\$600	-	+	-	-	0	0	-	-
2-W	6/78	\$500	-	+	0	-	0	0	-	0

Legend: + Subject is superior to the rental.
 - Subject is inferior to the rental.
 0 Subject and rental are comparable.

The report concludes: "The comparable rentals analysed bracket the annual fair market rental between \$600.00 and \$500.00. Emphasis is placed on the most comparable Lease No. 2-W. The annual fair market

2/ We note that in the initial appraisal report which served as the basis for the December 30, 1975, decision, the appraiser had stated that "[p]robably the two most important factors are coverage and location; i.e. what can be 'seen' from the site and what type of market can it serve. Other criteria of secondary importance are site size, availability of power, ease of access, ease of maintenance and security, and the physical characteristics of the site itself." 1975 Appraisal at 8. While the definition of "location" utilized in the 1979 Appraisal could be seen as encompassing both "coverage" and "location" as used in the 1975 Appraisal there is no explanation as to the increased value given to the existence of access to a site. This change, however, does not adversely affect appellant, since as it notes, B & M's access compared unfavorably to that of site 2-W.

rental for the use of the subject communication site C-17121 is estimated at \$500.00."

In its statement of reasons, appellant argues that the BLM data indicates that its right-of-way site is inferior, not equal, to Lease 2-W and therefore its rental should be less. The market data approach does not purport to examine identical sites to determine the rental; rather, it examines comparable privately leased sites to find a basis for estimating fair rental for Federal sites. BLM looks to overall comparability rather than an absolute matching of characteristics. For example, appellant suggests that it is inequitable to charge it the same rent as Lease 2-W on the basis of size. In its comparison BLM recognized that Lease 2-W covers a larger plot of land than appellant's site, but also considered among other factors that appellant has the security of a 50-year lease term whereas Lease 2-W runs for only 5 years. We do not find appellant's challenge to the BLM comparison persuasive.

Appellant strongly objects to the fact that site 2-W, which was judged most comparable with the B & M site, aggregated .23 acres, whereas the B & M site totalled only .003 acre. Both sites, appellant points out, were appraised at an annual rental rate of \$500. Appellant argues that not only is the rental rate for B & M approximately 76 times greater per acre than site 2-W, it also results in an effective rental of \$166,667 per acre. This appellant says, is "not only inequitable but also absurd."

This argument, however, obscures the fundamental reality that, as regards communication sites, the size of the site is not of particular importance in ascertaining fair market value. As just one example, if we start with the basis that the \$500 annual rental is correctly applied to site 2-W, and accept appellant's contention that acreage should be given controlling status, then the fair market rental for B & M's site would be \$6.57 annually. Even appellant has not suggested that this would be an accurate representation of fair market value. While size may become a relevant factor in determination of rental when the area granted is above the average, even then, the rental is not directly related to the number of acres.

Appellant also suggests that there are other sites in close proximity to its site which are more comparable to its site than the three examined in the appraisal report. BLM has informed us that the lessees listed by appellant are in fact sublessees on a site lease to Communications Electronic, U-23764. Annual rental for that site was valued at \$400. Communications Electronic was assessed \$100 a year because the State Office allowed a proration of the value among four users. We would note that, subsequent to the assessment by the Utah State Office, this Board held that proration of rentals among multiple users was prohibited. See Circle L, Inc., 36 IBLA 260, 262-63 (1978). Thus, we cannot find appellant's arguments persuasive.

[3] The general standard for reviewing rights-of-way appraisals is to uphold the appraisal if there is no error in the appraisal methods used by BLM and the appellant fails to show by convincing evidence that the charges are excessive. Full Circle, Inc., supra; Four States Television, Inc., 32 IBLA 205 (1977). Appellant has not made the necessary showing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

